

Dr. Todsen, late an Assistant Surgeon in the Army of the United States, I have examined: First. The Record of the proceedings of a Court Martial held at New-Orleans on the 15th January, 1826, and subsequent days for the trial of the said Dr. Todsen, on charges exhibited against him by Lieut. Pickell. Secondly, The certificate of I. F. M'Caleb, the counsel of the said Todsen, dated the 26th January, 1826. Thirdly, Sundry letters from most respectable persons, testifying high confidence in the honor and integrity of Dr. Todsen. For the purpose of giving a professional opinion: First, on the regularity of the proceedings of the Court. Secondly, on the question whether the judgement can be justified by any legal principles on the testimony offered. There are some alleged irregularities which, although important, do not appear to me to be sufficiently apparent, either by the record, or the testimony, and others, which, if truly stated, would not be of sufficient moment to cause any impeachment of the judgement. There are others, however, of a different nature, and if we take the certificate of Mr. M'Caleb, (corroborated, as it is, by the allegation of the accused in his defence, and uncontradicted by the Court) to be evidence of the fact, which must forcibly lead us to the conclusion, that most important errors have been committed to the prejudice of the accused; errors which would be sufficient to reverse the judgement of a court of law, and set aside any verdict on which it might have been founded.

WASHINGTON, January 10, 1827.

10

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The material charges were embezzlement of hospital stores, and fraud in overcharging the cost of articles purchased for the use of the hospital. All of the other charges except three hereafter to be noticed, grew out of them. Intention is of the essence of such a charge. Therefore, in examining it, the plainest rule of common justice, as well as of legal evidence, would dictate to the judges that every species of legal proof to show an honest intention, ought to have been admitted. But on the trial, one of the allegations proved, or supposed to be so by the court, was, that the accused had taken for his own use, some of the hospital stores to a very trifling amount, and to rebut this, Dr. Todsen alleged that, even admitting the truth of the testimony, which he denied, that no fraud could possibly have been intended, because he stated, and offered to prove, that he had, at his own expense, furnished stores to the hospital to a much greater amount for which he made no charge. Yet this testimony was refused to be admitted. He also offered to repel a similar charge, that, during the period in which the offence was said to have been committed, he had furnished to the hospital, stores to a much

greater amount than all the sums he had received. This testimony also was rejected. Some poultry, for which he had charged at six dollars and an half per doz., were proved to have been purchased by him at \$4 25 cts. and although he offered proof to show that the additional price had been really paid for the expense of transportation, the Court refused to hear it. I am of opinion that a similar decision in a court of law to any one of those above stated, would have been sufficient to set aside a verdict, and any judgement rendered thereon; and that it ought to have the same operation on the sentence of the Court Martial, as the great rules of evidence are the same in the military and the civil forum. I forbear to mention other grounds of error, because those I have enumerated are so apparent, that I have no hesitation in giving a decided opinion, that, according to law and justice, the sentence of the Court Martial was erroneous, and voidable in law for the refusal to hear the testimony offered.

On the second question, whether the sentence can be supported on the testimony, such as it was, given to the Court, I should say, first, that knowing the importance of the testimony offered and rejected, it is difficult to bring the mind to such a state as to enable it to decide, with precision, what ought to have been the conclusion if the testimony had been taken, without any such offer of contradictory or explanatory proof as was made by the accused; and that, connected with such offer, I should have no doubt that the proof was insufficient. But placing the offer out of view, there are some considerations which must, I think, bring us to the conclusion, that the evidence offered, and received, ought not, in sound discretion, to have produced the conviction. These are derived, first, from the nature of the charges, and the character of the person. The peculations charged were of such paltry amount, and the character of the gentleman upon whom they were endeavored to be fixed, was so respectable, that the strongest evidence would have been necessary to support them. It ought not readily to have been believed, that a man of a liberal profession, enjoying an excellent character, and the friendship of some of the men most respected in the civil, ecclesiastical, and military professions, could have been so depraved, as for the gain of a few dollars to stain his moral character, and risque the serious consequences of detection, which he must have known could not be avoided if he were guilty; because, having been long at variance with all the officers of the post, he could not have counted on their silence or indulgence; and the facts, if true, he must have known could not be concealed from them; when to this consideration is added, some contradictions in the testimony of the witnesses, and a mode of interrogating them, not always calculated to elicit the truth. I think, that even as the evidence stands, it would have justified a sentence of acquittal on the charges which related to the hospital stores. There were

three others, one for placarding an officer in consequence of a private quarrel; another for striking a camp-woman; and a third for disobedience of orders in not delivering the hospital books and instruments. To the first he pleaded guilty, and it cannot be believed (as nothing dishonorable in the dispute was imputed to Dr. Todsen) that this offence incurred the punishment directed by the sentence. To the second the same objection will apply, if the offence had been proved without any circumstance to palliate it; but the accused alleges, in the face of the Court, and they do not contradict his statement, that he offered to prove that the witnesses were entirely unworthy of credit, and was refused; that he was not permitted to put questions in the cross-examination tending to show that the testimony was false, and that those questions were, although evidently legal and proper, over-ruled. On the third charge the evidence was obviously defective, inasmuch as the articles ordered to be delivered were not proved to have been at the time in his possession; and neither the charge nor the evidence implies that Dr. Todsen appropriated the articles to his own use, or that the hospital was deprived of them.

On the whole, I am of opinion, from the documents submitted to me, that the evidence offered by Dr. Todsen, in his defence, ought to have been admitted; and, that if it had been admitted, and had been such as he stated, that he could not justly have been found guilty of those charges which he did not admit to be true.

EDW. LIVINGSTON.

A circumstance, also, that must have the greatest weight in this case is, the relative state of the hospital account, which shows, during the time that Dr. Todsen acted as Surgeon of the post, a saving to the hospital of seventy-five dollars and ninety-nine cents as appears by the certificate of the Commissary General of Subsistence, hereunto annexed.

E. L.

*New Orleans, January 26, 1826.*¹

At the request of Dr. George P. Todsen Assistant Surgeon in the army of the United States, and lately stationed at Petites Coquilles, Louisiana, I state, that I was employed by Dr. T. to assist him in his defence (as counsel) before a Court Martial lately convened at New Orleans, of which Major Twiggs was President, Captains Wilson, Brady, Harney, and Lieutenants Shannon and Page, members, and Assistant Surgeon McMahon, Judge Advocate.

The charges preferred against Dr. T. were various, and many of them (as will be perceived by reference to them) rested on the correctness of two vouchers which had been furnished during the months of July and August, 1825, by the Steward of the Hospital under the orders of Dr. T. to the Assistant Commissary of Subsistence.

On the trial, all the questions to witnesses were required by the Court to be written and then submitted to the Court before the witnesses were permitted to answer. One item in the July voucher of three dozen of fowls is stated, and charged at \$6 50 per dozen—the testimony (if I recollect shows that the price of the fowls was less, but Dr. T. alleged that he could prove, and put a question to a witness to that effect, to show) that there were incidental expenses in the transportation that caused them to amount to the sum charged. The Court refused the question to be answered, on the ground that every item of expense should have appeared in the vouchers.

Dr. T. further stated that he could show, in lieu of the articles he had received from the Hospital for his individual use, that he had supplied others equal, or greater in value, for which he had made no charge. The Court considered, from the character of the charges, it was not permitted to enter into the inquiry.

Dr. T. further stated, that he could show that from March to September, 1825, he had only received a certain sum from the Assistant Commissary of Subsistence for the purchase of articles for the Hospital, and that articles to more than the amount received had been furnished. This the Court also refused to inquire, stating it, as its impression, it had no right to enter into an investigation of those facts.

I make this statement only to declare facts. I do not pretend to say that the course pursued was erroneous. Had a full inquiry of the circumstances taken place, Dr. T. would, I hope, have been able to have shown that his motives were entirely honest, and his intentions free from fraud.

J. F. McCALEB.

Office of the Commissary General of Subsistence,

Washington, January 18, 1827.

Statement of the Hospital account at Petites Coquilles, from the 1st December, 1824, to the 30th November, 1825, under charge of Dr. Todsen.

Amount due the Hospital, 30th Nov. 1824,	\$ 64 20 4
Amount due 30th November, 1825, - -	140 19 8

Amount saved, or increase of Hospital funds,	
during Dr. Todsen's administration, -	75 99 4

GEO. GIBSON, *Commissary General of Subsistence.*

OFFICE OF THE COMMISSARY GENERAL OF SUBSISTENCE

Washington, 25th January, 1827.

From the returns received at this office, it clearly appears that Dr. Todsen performed the duties of Assistant Surgeon at Petites

Coquilles from December, 1824, to November, 1825, inclusive. When the Doctor commenced his duties, there was a balance of \$ 64 20 cents due to the Hospital, when he ceased to act, there was \$ 140 19 cents due, exhibiting an increase of \$ 75 99 cents.

In January, 1825, an Hospital cow and calf were purchased, which cost \$ 20. The whole amount of the Hospital fund was under the controul of Dr. Todsén, and was liable to be expended on his requisitions.

J. H. HOOK,
Maj. U. S. Army.

NEW ORLEANS, *Jan. 25, 1826.*

GENERAL: Though my acquaintance with you is but slight, and merely the result of a lucky accident, yet recollecting with gratitude the attentions you were good enough to bestow on me in the course of a short trip we made together on the Mississippi, I feel encouraged to obtrude my interference with you in favour of my friend, Dr. George P. Todsén, of the army, Assistant Surgeon at the Fort of Petites Coquilles, now arraigned before a Court Martial, whose proceedings, I understand, are to be referred to your superior sanction. Though the judgement of the Court has not yet been pronounced, it is, however, the opinion of all the friends of the Doctor, not less than of his adversaries, that it can hardly be favorable to him; not that the nature of the charges, such, at least, as have transpired, be in any degree alarming, but because prejudice and ill-will seem to have been for a long time hovering over his head, threatening a fatal consummation. Long have I at least anticipated the event, knowing the machinations used to raise him a host of enemies among his fellow officers. Indeed, to a superior officer of your sagacity, General, I trust the very charges preferred and specified against the Doctor, will be the best test of the feelings under which he has been impeached.

For my part, though very far indeed from insinuating any thing derogatory from the impartiality of the judges, yet from a long acquaintance I have had with the character of the accused, I would feel no hesitation in saying that his faults, if any, are only such as flow from self approbation, and are perfectly compatible with the strictest honor and integrity.

Under that impression, I hope you will excuse, General, whatever might appear intrusive in my voluntary mediation in his favour, and that you will be inclined to moderate, as much as the laws of military government may allow, any severity exercised against him. I would wish him sent to some distant garrison, where he would not have to struggle against the many disadvan-

tages, under which he is unavoidably placed in this military division.

With great respect, I have the honor to be, General,
Your most obedient servant,
L. W. DU BOURG,
Bp. of New Orleans.

Maj. Gen. Gaines.

(A true copy)

W. B. DAVIDSON, *Licut. U. S. Army.*
ADJUTANT GENERAL'S OFFICE,
Washington, June 23d, 1826.

HEAD QUARTERS, WESTERN DEPARTMENT,
Cincinnati, Ohio, February 25, 1826.

SIR: The exemplary piety and profound wisdom of Bishop Du Bourg of New Orleans, the writer of the enclosed letter, leave no doubt in my mind of the correctness of his suggestions in reference to the standing, and conduct of Assistant Surgeon Todsen; the record of whose trial I forwarded by the last mail to be laid before you.

Without any personal knowledge of Dr. Todsen, and with great respect for the officers composing his court, as *military men*, I cannot but apprehend that in their *judicial character*, on this occasion, they may have been deceived. To give full credit to the testimony in support of the charges of *embezzlement* and *misapplication of public money* and property (testimony of which much appears to be of a negative character, and little or none of it absolutely conclusive,) would seem to imply not merely neglect of duty and depravity of purpose on the part of the Doctor, but also an absence of reason bordering on insanity.

With these impressions I must hope to be pardoned for submitting to you the unofficial letter of Bishop Du Bourg, who is esteemed by those who know him best to be one of the most excellent of men.

With perfect respect, I have the honor to be,
EDMUND P. GAINES,
Maj. Gen. by Brevet, Com'g.
The Hon. Jas. Barbour, *Sec'y of War.*
(A true copy)

W. B. DAVIDSON, *Licut. U. S. Army.*
ADJUTANT GENERAL'S OFFICE, June 23d, 1826.

PHILADELPHIA, June 6, 1826.

SIR: The bearer, Dr. Geo. P. Todsen, late an Assistant Surgeon in the army, has been so unfortunate as to be involved in some personal disputes, which led to a Court Martial, under whose sentence, he believes, that he most unjustly and unmeritedly suf

fers. Dr. T. regards himself as the victim of prejudices, and of persecution; and the statement he makes of his case, corroborates this impression.

Dr. Todsen has been known to me many years. He resided for a time in my family. He is gifted with considerable natural talents, which he has cultivated, chiefly by his own exertions, with success, and possesses decided merit in the profession he has adopted. At the time Dr. T. resided with me, (and I have every reason to believe he continues the same,) he was a man of the strictest probity and honor. Of the integrity of Dr. T. I have proofs that are unequivocal. Some years past, when he commenced his professional career, desirous to aid his exertions in the advancement of his fortune, I gave him credit, for nearly \$ 1000, on his word alone. He punctually performed his engagements; I have repeatedly since heard, from very respectable sources, the most favorable statements of his character. The paltry charge impeaching his integrity, that, alone, which Dr. T. appears to regard, must, I think, be considered as groundless and malicious.

In giving to Dr. Todsen this letter to you, I have not presumed on the slight acquaintance, I had the honor to make with you, while in this city; but, from your well known liberal principles, and as the uniform advocate of the injured, and strenuous opponent of all oppressors, I believe you will not consider it amiss, that your attention should be drawn to, and your interference be solicited in, a case, which, so far as it presents itself to me, appears one of peculiar hardship.

With profound respect, your very obedient servant,
SAMUEL JACKSON.

Hon. HENRY CLAY.

PHILADELPHIA, *June 6, 1826.*

Being requested to express my opinion of the character of Dr. George P. Todsen, I have to state, that while he was a Student of medicine in the University of Pennsylvania, I became well acquainted with him, and considered him as uniting with fine talents and considerable attainments, great moral rectitude and propriety of conduct, and have since, had no reason to change this impression of his merits.

N. CHAPMAN, M. D. *Professor, &c. &c.*

March 26, 1814.

The bearer, Mr. George P. Todsen, is well known to me. He has regularly attended two courses of my lectures on *Materia Medica* and on the *Practice of Physic*, and also the lectures of other Professors in the University of Pennsylvania. He possesses talents, is industrious, and his character, I have every reason to believe, fair and correct. I believe him qualified to

practice his profession, and sincerely recommend him, as a young man worthy of the notice and patronage of those among whom he may take up his residence.

BENJ. SMITH BARTON, M. D.

*Professor of the Theory and Practice of Medicine,
in the University of Pennsylvania.*

Philadelphia, June 8, 1826.

Dear Sir: Permit me to introduce to your friendship, Dr. Todsén, a gentleman whom I esteem much for his intelligence and good moral character. Dr. T. visits Washington for the purpose of having justice done him in relation to an affair which he will explain to you. I sincerely believe him to be the victim of a cruel and malicious persecution, and trust that he will accomplish his purposes in visiting your place. If, when you become acquainted with the circumstances of his case, you think as I do, and I can hardly believe that you will think otherwise, you will, I am confident, give him your friendly assistance in forwarding his wishes.

Very respectfully,

J. EBERLE

DR. SEWAL,

Professor of Anatomy, Washington City.

St. Louis, le 17 Nov. 1820.

Pour tous mes amis à la Nouvelle Orleans.

Monsieur le Docteur Todsén, Porteur de la présente, se rendant à la Nouvelle Orleans pour y exercer la Médecine, Je me fais un plaisir de l'introduire à tous mes amis comm'un homme en qui j'ai la plus grande confiance pour ses connaissances et sa pratique médicale. Il a été depuis mon arrivée à St. Louis, jusqu' à son départ, le medecin de ma maison, et Je n'ai eu qu'à me louer de ses attentions et de son zèle.

L. GUIL. DU BOURG,

Eveque de la Louisiane.

Department of War, March 15, 1827.

Sir: The President of the United States has directed, that so much of the sentence of George P. Todsén, late an Assistant Surgeon of the United States' Army, as requires him to refund to the government "forty-seven dollars," be remitted.

I have the honor, &c.

(Signed) C. J. NOURSE, Chief Clerk.

A true copy, Ch. J. Nourse.

To COL. TOWSON,

Pay Master General